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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,081	09/11/2003	Paul T. Van Gompel	659-1764 K-C Ref. No. 159	5888
757	7590	06/15/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			MUSSEY, BARBARA J	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/660,081

Applicant(s)

VAN GOMPEL ET AL.

Examiner

Barbara J. Musser

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-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-20 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>3/23/06</u> . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo(U.S. Patent 6,450,996) or Otsubo(CA 2,292,168)[All column and line number refer to the U.S. Patent.] in view of Van Gompel et al.(U.S. Patent 4,938,753).

Otsubo discloses an absorbent garment having a topsheet(13), a backsheet(14), and an absorbent core(15).(Figure 2) The garment has a fold running its length from one waist section to the other along at least one side.(Figure 1) This fold is unfoldable at the waist sections and the fold causes the garment to be laterally expandable at the waist sections.(Col. 3, ll. 12-15, 33-38) The reference does not disclose that the front and back side panels of the garment are separate side panels which are attached to the main body of the garment. Van Gompel et al. discloses a well-known method of forming a diaper includes joining separate front and back side panels to the main core of the garment.(Figure 5A) It would have been obvious to one of ordinary skill in the art at the time the invention was made that separate front and back side panels could be attached to the main core of the garment rather than formed with it since this is a well-known alternative as shown for example by Van Gompel et al.(Figure 5A)

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Regarding claim 2, Otsubo discloses the side panels have tape(12) which secures the front side panels to the back side panels in use.(Figure 1; Col. 2, ll. 34-50)

Regarding claims 14 and 16, Otsubo discloses elastic leg holes which are along one side of the composite.(10,11)

Regarding claim 15, Otsubo discloses the backsheet can be a laminate made of a vapor-permeable liquid impermeable film bonded to a nonwoven fabric.(Col. 4, ll. 38-42) While the reference does not explicitly state the fabric is the outer layer, one in the art would appreciate that it would be since the only obvious purpose of the nonwoven is to improve touch or image, either of which would require the nonwoven to be the exterior layer. The vapor-permeable liquid impermeable layer can be considered a barrier between the core and the nonwoven backsheet.

Regarding claim 17, while Otsubo does not disclose the side panels being made of an elastic material, Van Gompel et al. discloses the side panels can be made of elastic.(Col. 3, ll. 10-11) It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the side panels of Otsubo from an elastic material since Van Gompel et al. discloses this is a known type of side panel and since an elastic panel would result in a good fit.

3. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo and Van Gompel et al. as applied to claim 1 above, and further in view of Putzer et al.

The references cited above do not disclose the absorbent core being interfolded with the backsheet. Putzer et al. discloses it is known that when forming a folding the

backsheet, the core can either be interfolded with the backsheet or not.(Figures 4 and 5) It would have been obvious to one of ordinary skill in the art at the time the invention was made that the absorbent core could be wider and interfolded with the backsheet rather than narrow and not interfolded with the backsheet since Putzer et al. discloses these are alternatives in the art(Figures 4 and 5) and since a larger absorbent core would allow the absorption of a larger amount of fluid.

Regarding claim 4, since the fold(18) unfolds, one in the art would appreciate that in the unfolded state the garment had a different width than in the folded state.

Regarding claim 5, since the folds are bonded to a web(2) at the center of the folds, the ends of the folds could be unfolded without unfolding the center.

Regarding claim 6, since the Figures of Otsubo show the folds together are substantially wider than 10% of the width of the body, one in the art would appreciate that the difference between the expanded and unexpanded widths would be at least 10%, particularly since for the difference in width to be less than 10%, each fold would have to be very small.

Regarding claim 7, Otsubo discloses the topsheet(16) is interfolded with the backsheet.(Figure 1)

4. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo and Van Gompel et al. '753 as applied to claim 1 above, and further in view of Van Gompel et al. '584(WO 00/30584).

The references cited above do not disclose the diaper front and back being extensible. Van Gompel et al. '584 discloses making the cover resiliently stretchable to

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result in a considerably improved fit.(Pg. 2, ll. 16-18, 30-31) It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a back cover to the diaper of Otsubo and Van Gompel et al. '753 and to make this cover and the topsheet of the diaper extensible since this would result in an improved fit of the diaper(Pg. 2, ll. 16-18, 30-31) particularly since Van Gompel et al. discloses using folds in conjunction with extensible covers(Figure 4A).

Regarding claims 9 and 12, Van Gompel et al. discloses the outer cover can elongate at least 1 cm when subjected to a force of 30 gmf per inch.(Pg 8, ll. 5-6)

Regarding claims 10 and 13, Van Gompel et al. discloses the extensible layer can provide a substantially permanent deformation of at least about 20% when subjected to a force of 50 gmf per inch and then allowed to relax for one minute.(Pg. 8, ll. 7-8)

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Otsubo, Van Gompel et al., and Putzer et al. as applied to claim 19 above, and further in view of Sayama(U.S. Patent 6,248,098).

The references cited above do not disclose the supplemental layer(2) ending the length of the diaper. Sayama discloses a supplemental layer(2) extending the length of the diaper.(Figure 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the supplemental layer of Otsubo, Van Gompel et al., and Putzer extend the length of the diaper as taught by Sayama since solid waste can spread the entire length of the diaper and since Otsubo desires the solid waste to

remain on the supplemental paper, suggesting extending the supplemental layer the length of the diaper as taught by Sayama.

Allowable Subject Matter

6. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: regarding claim 21, the prior art of record does not teach or fairly suggest the top sheet of the diaper, which is interfolded with the back sheet, being the outermost layer and coming into contact with the body of the user along its entire length. In Otsubo, the top sheet(2) which contacts the body of the user along its length is not interfolded with the back sheet while the top sheet(13) which is interfolded with the back sheet does not contact the user along the length of the diaper.

Response to Arguments

8. Applicant's arguments filed 3/13/06 and 3/31/06 have been fully considered but they are not persuasive.

Regarding applicant's argument that Van Gompel discloses stretchable side panels which would not have been used with folds in the waist region, examiner is not suggesting that the exact side panels of Van Gompel et al. be used in Otsubo, but rather that Van Gompel et al. suggests the use of separate side panels which can be

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attached to the core of the diaper instead of side panels which are formed integrally with the core of the diaper. Additionally, the use of one type of waist accommodation does not preclude the use of another. Stretchable side panels are used with waist elastic, and both accommodate the user and provide a good fit.

Regarding applicant's argument that Van Gompel et al. teaches away from Otsubo, Otsubo is the primary reference.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571)

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272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


BJM


SAM CHUAN YAO
PRIMARY EXAMINER